

UNREPORTED
*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC. APP. 476/2004

RAM RATI @ RAM WATI & ORS. Appellants
Through: Mr. Navneet Goyal, Advocate
versus

THE NEW INDIA ASSURANCE CO. LTD.
& ORS. Respondents
Through: Mr. D.K. Sharma, Advocate
for the respondent No.1

% Date of Decision : January 17, 2011

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

The prayer in the present appeal is for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Delhi to ₹ 55 lakhs as originally claimed with interest at the rate of 12% per annum.

2. Principally the enhancement is sought on two grounds. The first ground urged by Mr. Navneet Goyal, the learned counsel for the claimants/appellants, who are the widow and sons of the deceased Shri Dhani Ram Yadav, is that the learned Motor Accident Claims Tribunal erred in deducting a sum of ₹ 5,04,000/- from the total financial dependency of the petitioners, which the Tribunal computed to be in the sum of ₹ 10,58,016/-. The premise for this contention is that it is settled law that the pension received by the legal representatives of the deceased cannot be deducted from the compensation awarded to them when the deceased dies in a motor vehicular accident.

3. The other ground urged by Mr. Navneet Goyal, the learned counsel for the appellants, is that the learned Tribunal ought to have used the multiplier of 9 instead of the multiplier of 8 to the multiplicand to compute the total loss of dependency of the petitioners since the deceased was in the age group of 55 to 60 years and the appropriate multiplier for the said age group is the multiplier of 9.

4. Mr. D.K. Sharma, the learned counsel for the respondent No.1 – Insurance Company, on the other hand, sought to support the award by contending that it was a just and fair one and that a sum of ₹ 6,14,016/- having been awarded to the appellants along with interest at the rate of 12% per annum from the date of the filing of the petition till 31.12.2001 and thereafter at the rate of 9% per annum till the date of the award, the enhancement of compensation was not warranted.

5. It is not in dispute that the deceased was a graduate from the University of Delhi and his certificate of Bachelor of Education has been proved on record as Exhibit PW1/3 while the original degree of M.A. has been proved as Exhibit PW1/4. It is also not in dispute that the deceased was a Post Graduate Teacher in Rawalpindi S.D. Senior Secondary School. His salary certificate Exhibit PW2/3 issued by the Vice Principal of the aforesaid school has been placed on record. His chances of further promotional prospects have also been brought on record by way of an estimate prepared by the Vice Principal as Exhibit PW2/2 and the relevant extracts of his service book are

exhibited as Exhibit PW2/4. Income-tax is stated to be deducted at source. There is no rebuttal of this evidence inasmuch as PW2, who proved the aforesaid documents, has not been subjected to cross-examination by the respondent No.1 – Insurance Company.

6. The learned Motor Accident Claims Tribunal after noting that as per Exhibit PW2/3 the deceased was receiving a basic pay of ₹ 10,500/- per month and after adding up the allowances his gross salary was ₹ 18,415/- per month and after deductions of income-tax and GPF the net salary payable to him was ₹ 15,415/- per month, took into account the future prospects of the deceased till December, 2003 and concluded that had the deceased not died in the year 2000 itself, he would have received a sum of ₹ 20,998/- per month. Deducting the sum of ₹ 3,000/- from his net salary, the learned Tribunal arrived at the figure of ₹ 17,998/- per month as the monthly financial income of the deceased and a figure of ₹ 2,15,976/- as the annual income of the deceased. Again deducting 1/3rd from this amount, the learned Tribunal computed the annual financial dependency of the appellants to be in the sum of ₹ 1,32,252/- to

which it applied the multiplier of 8, since the deceased was 57 years of age as per his school certificate Exhibit PW1/1, and thus came to the figure of ₹ 10,58,016/-.

7. Proceeding on the aforesaid basis, in paragraph 11 of its judgment and award, the learned Tribunal observed as follows:

“11. As per EX PW2/2, a sum of ₹ 5250/- p.m. is already been given to the petr. no.1 by way of monthly pension. As such the annual pension amount would come to a sum of ₹ 63,000/- and multiplying this amount by the same multiplier which was used to determine the financial dependency, i.e. a multiplier of 8 is being used by which the total amount of pension receivable for the said 8 yrs would come to a sum of ₹ 5,04,000/-. This amount is to be deducted from the total financial dependency of the petrs. and as such the financial loss suffered by the petrs. would come to a sum of ₹ 5,54,016/-.”

8. As noted above, the first contention raised by Mr. Navneet Goyal seeks to assail the findings rendered in this paragraph with regard to the pension of the deceased. Mr. D.K. Sharma did not dispute, as indeed he could not have, that it is settled law that the pension of the deceased is not to be taken into consideration while computing the annual loss of dependency of his legal representatives

in a case where the deceased dies in a motor vehicular accident. It was so held by a Full Bench of this Court in ***Delhi Transport Corporation vs. Meena Chaturvedi and Others, 2006 ACJ 406***. In the said case, it was noted that in ***N. Sivammal vs. Managing Director, Pandion Roadways Corporation, 1985 ACJ 75 (SC)***, the Supreme Court had pointed out that the deduction of monetary benefit of pension from the amount of compensation was without justification. The Court concluded:

“14. In view of the aforesaid principles laid down by the Apex Court, the question is no more res integra and the Tribunal while exercising jurisdiction under Motor Vehicles Act is required to consider the payment of damages/compensation to the person concerned on the basis of income and the loss that others would suffer irrespective of benefits, such as, insurance, provident fund, pension, etc.”

9. In view of the aforesaid, the first contention of Mr. Navneet Goyal must be accepted. The necessary corollary, quite obviously, is that it must be held that the learned Tribunal could not have deducted the pension amount of ₹ 5,04,000/- from the income of the deceased

while computing the total loss of dependency of his legal representatives.

10. Adverting to the second contention of Mr. Goyal that the multiplier applied by the learned Tribunal should have been the multiplier of 9 as held by the Hon'ble Supreme Court in *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., 2009 ACJ 1298*, there is no manner of doubt that in paragraph 19 of the said judgment the Hon'ble Supreme Court after indicating the multipliers in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas AIR 1994 SC 1631*, *UP State Road Transport Corporation v. Trilok Chandra (1996) 4 SCC 362* and *New India Assurance Co. Ltd. v. Charlie AIR 2005 SC 2157* and setting out the same in the form of a chart in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163A of the Motor Vehicles Act (with appropriate deceleration after 50 years) has held that in order to avoid inconsistency in all cases falling under Section 166 of the Motor Vehicles Act, the multiplier to be adopted for the age group between 56 to 60 years is the multiplier

of 9. Thus, the second contention urged by Mr. Navneet Goyal is also worthy of acceptance, being in consonance with the guidelines laid down by the Supreme Court with a view to establish uniformity and consistency in similar matters.

11. This takes me to the aspect of computation of the compensation itself. At this juncture, it deserves to be noted that Mr. Navneet Goyal very fairly conceded that the future prospects of the deceased can not be taken into account in view of the judgment of the Supreme Court rendered in the case of *Sarla Verma (supra)* and that the income of the deceased may be taken to be in the sum of ₹ 18,415/- per month. Mr. Goyal also fairly conceded that a sum of ₹ 2,000/- be deducted therefrom towards income-tax. Thus calculated, the income of the deceased works out to ₹ 16,415/- per month. Assuming that the deceased was spending 1/3rd of his entire earnings on his personal expenses and maintenance, the financial loss of dependency of the appellants per month works out to be ₹ 10,943.33, which may be rounded off to ₹ 10,943/-, i.e., ₹ 1,31,320/- per annum. This multiplicand, as already stated, deserves to be augmented with the

multiplier of 9, and thus the total financial loss of dependency of the appellants works out to ₹ 11,81,880/- and after adding the non-pecuniary damages awarded by the learned Tribunal to ₹ 12,41,880/- (including the amount of the interim award).

12. In view of the aforesaid, the appellants are held entitled to the enhancement of ₹ 6,27,864/- with interest at the rate of 7.5% from the date of the institution of the petition till the date of realization. The increase in compensation shall enure to the benefit of all the appellants in the same ratio as awarded by the learned Tribunal. The payment of the entire amount shall be made within 30 days from today, failing which penal interest at the rate of 12% per annum shall be paid on the enhancement amount as well.

13. MAC. APP. 476/2004 stands disposed of accordingly. The parties shall bear their respective costs.

A copy of this judgment be given *dasti* to the counsel for both the parties, as prayed.

**REVA KHETRAPAL
(JUDGE)**

**January 17, 2011
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